IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

State Bank of India V/s Mahendra Singh & others

S.B. Civil Regular First Appeal No. 63/90 against the judgment and decree dated 22.12.1989 passed by Shri Brijlal Bundel, Addl. District Judge, Bholpur in Civil Suit No. 28/86.

Date of Judgment **July 12, 2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. Anil Sharma for the appellant
Mr. Ajay Agrawal for the respondents

BY THE COURT;

This appeal under Section 96 CPC arises out of the judgment and decree dated 22.12.1989 passed by the learned Additional District Judge, Dholpur, whereby the learned Judge partly decreed the plaintiff's suit.

The plaintiff filed a suit for recovery of Rs. 2,29,256.20 against the defendants. The defendant No.1 had borrowed the money, while defendants No. 2 and 3 extended guarantee. As per the averments of the suit, pursuant to the application dated 21.1.1983 submitted by the defendant Mahendra Singh for grant of loan for

purchase of a vehicle, the plaintiff Bank granted a medium term loan of Rs. 1,65,000/-. Accordinly, the defendant No.1 executed an agreement on 14.2.1983 in favour plaintiff. As per terms and conditions of the agreement, the loan amount was to be replied in 40 installments. In the light of terms and conditions agreed upon between the parties, the truck was insured and the plaintiff Bank paid insurance premium of Rs. 3413 on 19.3.84, Rs. 2929 on 1.3.1985 and Rs. 2824 on 8.3.1986. The plaintiff also paid Rs. 599/- on 29.7.83 and Rs. 649 on 16.1.84 to the Insurance and Credit Guarantee Corporation as against guarantee fee on behalf of defendant No.1.

It was averred that defendant No. 1 repaid only Rs. 25850.60 as against the loan account. The plaintiff bank calculated interest to the tune of Rs. 79,467.30 at the rate of 12-1/2% p.a. from the date of loan till 10.6.86 on the amount of loan which remained unpaid. As per the plaintiff, the defendant No.1 failed to reply the loan amount despite several requests having been made. It was in these circumstances that the plaintiff Bank filed a suit for recovery of a sum of Rs. 2,29,256.20 as against the defendants.

The defendant No.1 contested the suit by filing written statement. The defendants No. 2 and 3 did not contest the suit and hence ex-party proceedings were drawn against them. In the written statement, the defendant No.1 has admitted receipt of loan of Rs. 1,65,000/-. However he has denied to have given any authority to the plaintiff bank to deposit the insurance premium or to make payment of expenses on his behalf. He also denied receipt of notices. The rate of interest is too excessive and there was no agreement to that effect. He further denied creation of equitable mortgage in favour of the Bank, in respect of his land because the truck was already hypothecated with the Bank. In additional plea, the defendant has stated that plaintiff Bank has got the truck auctioned. He has no means to repay the loan loan amount. Lastly the defendant prayed for fixing of easy instalments.

On the basis of pleadings of the parties, the trial court framed issues. The plaintiff examined 4 witnesses, namely, PW1 Krishna Kumar Batra, PW2 Vishwadeep Goyal, PW3 Hukam Singh and PW4 Nathilal, while defendant Mahendra Singh examined himself as DW1.

At the conclusion of trial, the learned trial

court decided issues No.1 and 2 against the plaintiff and in favour of defendant. However, while deciding issue No.3 as to the relief, the trial court decreed the plaintiffs suit only for a sum of Rs. 1,02,570/- (Rs. 55,550/- as principal sum and Rs. 47,020 towards interest). Hence the present appeal.

In assailing the judgment and decree to the extent it disallowed the claim of the plaintiff, learned counsel firstly contended that the trial court has wrongly discarded the plaintiff's evidence with respect to payment of insurance premium. Referring the evidence, ocular and documentary, learned counsel argued that the plaintiff bank had paid the insurance premium of Rs. 3143, 2929 and 2824 on different dates on behalf of defendant No.1, inasmuch as since the defednant No.1 failed to get the truck insured, the plaintiff bank had to get the vehicle insured. Therefore, the plaintiff bank is legally entitled to recover the amount paid by it towards insurance premium.

Per contra, learned counsel for the defendant No.1 has supported the finding arrived at by the trial court and submitted that it calls for no interference as it

being based on proper appreciation of evidence.

I have given my thoughtful consideration to the above argument.

At the very out set it may be stated that the defendant No.1, according to the learned counsel, has paid the entire decreetal amount i.e. Rs. 1,02,570/- in instalments in the following manner:

Amount paid	date of payment
12,000.00	9.6.1990
12,000.00	26.6.1991
12,000.00	22.6.1992
12,000.00	17.6.1993
12,000.00	3.6.1994
12,000.00	16.6.1995
12,000.00	7.6.1996
12,000.00	16.6.1997
6,570.00	16.6.1998
1,02,570.00	

The payment as aforesaid has not been disputed by the plaintiff Bank.

As stated above, it is also an admitted fact that the truck in question was auction on 22.12.1987 and the plaintiff Bank has received a sum of Rs. 83,600/- as the sale price of the Truck as against the amount of loan.

The learned trial court, considering the financial status of the defendant No.1, in particular the fact

that truck in question was the only source of his livelihood and that too has been sold by the Bank so as to recover the loan amount, has not awarded interest from the date of judgment till its realisation, but has permitted him to pay the decreetal amount in instalment with the rider to pay interest @ 6% p.a. in the event of his failure to pay 3 instalments on the stipulated date.

The plaintiff is aggrieved by disallowing the claim of Rs. 9166/- towards the insurance premium paid by it on different dates i.e. Rs. 3413 on 9.3.84, Rs. 2929 on 1.3.1985 and Rs. 2824 on 8.3.1986. To establish the claim the plaintiff has examined PW1 Krishna Kumar Batra, who has categorically stated that insurance of the truck which was purchased by the defendant No.1 out of the loan amount was got insured by the plaintiff bank and the plaintiff bank had paid premium of Rs. 9166 to the Insurance Company on 9.3.84, 1.3.85 and 8.3.1986. The vouchers Exs. 12 and 13 clearly indicate that plaintiff Bank has paid the insurance premium to the Insurance Company. The defendant No.1 himself has admitted that the truck was insured. However, he stated that he did not get the truck insured. Thus, from

respective evidence that only conclusion that can be deduced would be that the plaintiff Bank paid the amount of Rs. 9166/- as against the insurance premium. It must, therefore, be held that the trial court has wrongly disallowed the aforesaid claim of the plaintiff. The plaintiff is held entitled to receive the aforesaid sum paid by it towards insurance premium.

The plaintiff Bank is further aggrieved by rejection of claim for Rs. 599/- and 649 as against guarantee fee. This guarantee fees was required to be paid to the Deposit Insurance & Credit Guarantee Corporation (for short, the Corporation) in respect of the loan granted to defendant No.1. Since the loan was for more than Rs. 25,000/- borrower was under an obligation to pay the guarantee fees to the Corporation. Since the defendant failed to discharge this obligation, the plaintiff Bank had no option but to deposit the guarantee fees to the Corporation. PW1 Krishna Kumar Batra, Manager of the plaintiff Bank has stated that plaintiff Bank had paid the guarantee fees to the Corporation vide vouchers Exs. 10 and 11. However, in cross examination the witness has deposed that the Corporation had not raised any demand for

payment of guarantee fees. He stated that it is true that in condition No.8 of the agreement there is no reference as to the payment of guarantee fees of the loan. According to this witness the amount of Rs. 599/- and 649/- was sent to the corporation on 29.7.1983 and 16.1.1984. He then stated that statement concerning payment of fees was sent to the local Head Office, Delhi, from where the same was transmitted to the Corporation. A glance at the record shows that there is no receipt to prove that such amount was sent to the Corporation. That apart there is no mention in Condition No.8 of the Agreement, Ex.1 that in the event of guarantee fees if paid by the plaintiff Bank, the defendant would repay the same to the plaintiff Bank. Be that as it may, the plaintiff has not been able to prove that Rs. 599 and 649 were paid by it to the Corporation. In this view of the matter, the trial court has rightly rejected the claim of the plaintiffs as regards payment of guarantee fees.

Lastly, learned counsel for the plaintiff appellant has strenuously contended that the trial court has committed grave error in not allowing interest at the rate of 12-1/2% and that too for the

period from the date of grant of loan till the date of filing of the suit. Learned counsel submitted that the plaintiff was entitled receive interest at the rate agreed upon by the defendant No.1 through various documents executed by him from time to time, w.e.f. grant of loan till payment, inasmuch as it was an contractual agreement.

A bare reading of Sec. 34 CPC makes it clear that the use of the word `may' in Section 34 confers the discretion on the court to award interest at such rate as it deems fit. The court while exercising its discretion can order for payment of interest pendente lite at any rate and/or can refuse to grant interest, as it deems fit. However, such discretion conferred by Sec. 34 has to be exercised fairly, judiciously and for the reasons.

Proviso to Sec. 34 CPC provides that where the liability in relation to the sum so adjudged had arisen out of commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneyes are lent or advanced by nationalised banks in relation

to commercial transaction. In the case at hand, the money was lent by the plaintiff, a nationalised bank and interest on the loan amount was agreed to be paid in terms of agreement. Since Sec. 34 does not confer any discretion upon the court to disallow interest at the contractual rate w.e.f. the date of advancement of loan till filing of the suit. Therefore, the plaintiff Bank is held to be entitled to receive interest at the contractual rate i.e. 12-1/2% p.a. on the principal sum from the date grant of loan till filing of the suit. In my considered view, the trial court, considering the circumstances and financial capacity of payment by the defendant has rightly used his discretion in disallowing interest after passing the judgment.

So far as grievance of the plaintiff against rejection of its claim towards expenses incurred in issuing notices is concerned, suffice it to observe that since it was a money suit, there was no requirement of notice having been issued by the plaintiff bank and therefore, the trial court in my considered view has rightly disallowed the plaintiff's claim.

In the result, the appeal is allowed in part in

the manner indicated above and it is held that in addition to the decree passed by the trial court, the plaintiff shall also be entitled to receive Rs. 3413/-, 2929/- and 2824/-, totaling to Rs. 9616 i.e. the amount of insurance premium, with interest @ 12-1/2% with effect from the date the aforesaid amount was deposited by the plaintiff Bank with the Insurance Company, till the date of filing of the suit and thereafter the Bank shall receive interest @ 6% p.a. till the date of judgment. The plaintiff shall also be entitled to receive interest on Rs. 1,65,000/- at the rate of 12-1/2% p.a. from the date of loan till the suit was filed and thereafter at the rate of 6% p.a. Till 22.12.1987 and further at the rate of 6% p.a. On Rs. 55,580/- from 22.12.1987 till the date of judgment. The amount of interest of Rs. 47,020/- already paid by the defendant shall be adjusted against the amount of interest to be calculated in accordance with the order of this court.

In the facts and circumstances of the case, the parties are left to bear their own costs.

(Khem Chand Sharma), J.

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